IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 7167 of 2001(C)

PETITIONER:

A. KHADEEJA BEEVI, MANAGER, MATHA H.S.,
VILAKKUPARA P.O., 9VIA0 ANCHAL, KOLLAM.

BY ADV. SMT.V.P.SEEMANDINI
SMT.GAYATHRI VIJAYAN

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, TRIVANDRUM – 695 001.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM.

4. THE DIST. EDUCATIONAL OFFICER, KOTTARAKKARA.

BY GOVERNMENT PLEADER SHRI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 7167/01

APPENDIX

Petitioner's Exts.

Ext.P1 true copy of the G.O.(MS) 123/91/Gen.Edn. dt. 5.8.1991.

Ext.P2 true copy of appointment order of Usharani G. dt. 30.9.94.

Ext.P3 true copy of order dt.1.2.1996 issued by the 4th respondent.

Ext.P4 true copy of the order dt. 26.4.96 issued by the 3rd respondent.

Ext.P5 true copy of the order dt. 30.9.96 issued by the 2nd respondent.

Ext.P6 true copy of the G.O.(Rt) No.1628/97/G.Edn. dt. 26.5.97.

Ext.P7 true copy of the agreement dated August, 1997 executed by the petitioner.

Ext.P8 true copy of the G.O.)MS) 347/98/G.Edn. dt. 1.9.98.

Ext.P9 true copy of the G.O.(Rt)No.585/99/G.Edn. dt. 4.2.98.

Antony Dominic, J.

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O.P.No.7167 of 2001

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Dated this the 7th day of February, 2007.

JUDGMENT

The prayer in this Writ Petition is to quash Exts.P6 order and Ext.P7 agreement. Another prayer is also sought for requiring the respondents to approve the appointment of Smt.G.Usharani unconditionally in the light of Exts.P8 and P9 orders.

2. It is seen from Ext.P6 that while approval of appointment of Smt. G.Usharani is accorded, the Government had imposed a condition that the Manager shall execute an agreement to the effect that the next arising vacancy of H.S.A. will be filled up by a protected teacher and the objection is to the extent of imposing the said condition. As is evident from Ext.P6 itself during the course of hearing before the Additional Secretary to Government, General Education Department, the Manager had expressed his willingness to appoint a protected Teacher in the next arising vacancy. Such undertaking was also made before the Government in the revision petition itself as is discernible from paragraph 2 of Ext.P6 order. Therefore, the condition that the

Manager will fill up the next arising vacancy of H.S.A. by a protected Teacher was voluntarily offered by the petitioner herself.

3. The requirement of execution of an agreement in Ext.P6 is objected to by the counsel for the petitioner making reference to Ext.P1, the Government order dated 5.8.1991 which states that the condition regarding the execution of the agreement in stamp paper will not be insisted so far as the approval of appointment of fresh hands in the categories of L.P.S.A., U.P.S.A. and H.S.A. are concerned Following Ext.P6, Ext.P7 agreement was executed in the letter head of the petitioner. Ext.P7 being not on a stamp paper, it cannot be said that the agreement executed is in violation of Ext.P1 Government order which only dispensed with the requirement of stamp paper. In any case, the execution of the agreement being a condition incorporated in Chapter 5, Rule 6 (VIII) of the Kerala Education Rules, the requirement of agreement cannot be objected to. Further, on the basis of the voluntary offer made by the petitioner, the Government had approved the appointment incorporating the conditions offered by the petitioner and it is not open to the petitioner now to turn around and say that illegality has been committed by the Government by acting upon the offer so made by the petitioner.

In the aforesaid circumstances, I see no merit in this Writ Petition and the same is dismissed.

Antony Dominic
Judge.

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